

² The Board notes that, following the issuance of OWCP's February 8, 2017 decision, appellant submitted new evidence. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time it issued its final decision. Thus, the Board may not consider the new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 17, 2016 appellant, then a 67-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, at 10:40 p.m. that night, she sustained a contusion and bruise to the head due to a defective latch on the top gate of an all-purpose container (APC) on a workroom floor. On the reverse side of the claim form, the employing establishment checked a box marked “yes” in response to the question whether she was injured in the performance of duty. Appellant stopped work on November 18, 2016.

OWCP received a November 18, 2016 brain computerized tomography (CT) scan report signed by Dr. Tara Otto, a Board-certified radiologist. Dr. Otto noted a clinical history that appellant sustained an injury or trauma when a metal shelf fell on her head, initial encounter, blunt trauma (contusions or hematomas). She provided an impression of no acute intracranial finding visualized.

OWCP also received a November 18, 2016 excuse from work note with an illegible signature from Aria Health. The note excused appellant from work and recommended that she avoid physical activity through November 21, 2016.

In a prescription dated December 2, 2016 that, was mostly illegible, Dr. John M. Anderson, an attending Board-certified family practitioner, provided a diagnosis of headache.

In a facsimile transmittal dated December 15, 2016, Ruth Shafer, an OWCP registered nurse, requested that Dr. Anderson submit information regarding appellant’s diagnosis, treatment plan, and work capacity. She noted that the date of injury was November 17, 2016. In a December 20, 2016 continuation of pay (COP) nurse report, Nurse Shafer indicated that appellant remained off work with a head injury. She related that appellant had informed her that she could possibly return to work on January 2, 2017. Nurse Shafer reported that, on the date of injury, appellant placed mail on the top shelf of a container and closed the door. She further reported that, when appellant went to place mail on the bottom shelf of the container, the top shelf fell on her head. Appellant fell down, but did not lose consciousness. She was taken to an emergency room by a coworker and underwent a CT scan that was negative.

By letter dated January 3, 2017, OWCP advised appellant that when her claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. It noted that the employing establishment did not controvert COP or challenge the merits of the case and payment of a limited amount of medical expenses was administratively approved. However, the merits of the claim had not been formally considered and appellant’s claim was being reopened because she had not returned to full-time work. OWCP explained the additional factual and medical evidence needed and afforded appellant 30 days to submit such evidence. It also requested that she respond to a factual development questionnaire.

OWCP subsequently received a December 9, 2016 prescription note from Dr. Anderson. Dr. Anderson indicated that appellant had a closed-head trauma injury and that she could return to full-duty work without restrictions on an illegible date in 2017.

In a February 8, 2017 decision, OWCP denied appellant's traumatic injury claim. It found that she had failed to respond to its January 3, 2017 development questionnaire and failed to describe the November 17, 2016 incident in sufficient detail to establish that the employment incident occurred as alleged. OWCP further found that the medical evidence submitted did not contain a medical diagnosis in connection with the claimed injury or event(s).

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁸

³ *Supra* note 1.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id.*

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

ANALYSIS

The Board finds that appellant has failed to establish an injury in the performance of duty on November 17, 2016, as alleged.

Appellant has not provided sufficient detail to establish that a traumatic incident occurred as alleged.⁹ On her Form CA-1, she alleged that she sustained a head injury on November 17, 2016 due to a defective latch on the top gate of an APC. Appellant did describe precisely where the alleged injury occurred, providing the exact location of the work floor at the employing establishment. However, the Board notes that her description of the traumatic incident is vague and fails to provide any specific detail to determine the manner in which she sustained her alleged injury. Appellant's description did not relate with specificity the circumstances of the injury.¹⁰ She did not explain how the defective latch on the top gate of an APC caused her claimed injury. The Board notes that Dr. Otto's November 18, 2016 brain CT scan report and Nurse Shafer's December 20, 2016 COP nurse report relate that on November 17, 2016 the top shelf of a container on which appellant had placed mail fell on her head. While this statement provided additional details of how the injury allegedly occurred, it remains unclear as to whether these reports were based on an accurate history of injury. The Board is unable to consider the accuracy of Dr. Otto's and Nurse Shafer's recitation of the history of injury as appellant has not provided details as to how the injury occurred.¹¹

Appellant was provided an opportunity to establish how her alleged injury occurred on November 17, 2016 while in the performance of duty. By letter dated January 3, 2017, OWCP requested that she describe the factual circumstances of her injury and provided her with a factual development questionnaire for completion. Appellant did not respond to the questionnaire and failed to provide a narrative statement detailing the traumatic incident prior to the issuance of OWCP's denial of her claim on February 8, 2017. The only explanation she provided pertaining to the alleged November 17, 2016 traumatic incident was the generalized and vague statement noted on her Form CA-1. By failing to describe the employment incident and circumstances surrounding her alleged injury, appellant has not established that the traumatic injury occurred at work, as alleged.¹² Thus, the Board finds that she has not meet her burden of proof.¹³ As such, it is unnecessary to address the medical evidence regarding causal relationship.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁰ *See T.N.*, Docket No. 16-1099 (issued December 16, 2016).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *See Bonnie A. Contreras*, 57 ECAB 364 (2006); *Alvin V. Gadd*, 57 ECAB 172 (2005).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a head injury in the performance of duty on November 17, 2016, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board